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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Report of the Group of Three established under the Convention

Chairperson/Rapporteur: Mrs. Narcisa L. Escaler (Philippines)

I. INTRODUCTION

1. The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly in resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976, on the thirtieth day after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. As at 31 December 1990, there were 88 States parties to the Convention (see E/CN.4/1991/40, annex).

2. Under article VII of the Convention, the States parties undertake to submit periodic reports to the Group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.

3. In accordance with article IX of the Convention, the Chairman of the Commission on Human Rights is authorized to appoint a group consisting of three members of the Commission, who are also representatives of States parties to the Convention, to consider reports submitted by States parties in accordance with article VII. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission, to consider the reports submitted in accordance with article VII.

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4. In accordance with article IX of the Convention and General Assembly resolution 31/80, the Chairman of the forty-sixth session of the Commission appointed the representatives of Ethiopia, Mexico and the Philippines as members of the Group.

5. By its resolution 1990/12 of 23 February 1990, the Commission decided, inter alia, that the Group of three members of the Commission appointed in accordance with article IX of the Convention should meet for a period of not more than five days before the forty-seventh session of the Commission to consider the reports submitted by States parties in accordance with article VII; commended those States parties that had submitted their reports, and called upon those that had not yet done so to submit their reports as soon as possible; reiterated its recommendation that States parties should take full account of the general guidelines laid down by the Group in 1978 for the submission of reports (see E/CN.4/1286, annex); and requested the Group of Three to continue, in the light of the views expressed by States parties to the Convention, the examination of the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa, including legal action that might be taken under the Convention against transnational corporations whose operations in South Africa came under the crime of apartheid, and to report to the Commission at its forty-seventh session.

II. ORGANIZATION OF THE SESSION

A. Attendance

6. The Group held its fourteenth (1991) session at the United Nations Office at Geneva from 21 to 25 January 1991. The session was opened by the representative of the Secretary-General. The membership of the Group was as follows:

Ethiopia	Mr. Negash Kebret
Mexico	Mr. Claude Heller
Philippines	Mrs. Narcisa L. Escaler.

B. Election of officers

7. At its meeting held on 21 January 1991, the Group elected Mrs. Narcisa L. Escaler as Chairperson/Rapporteur.

C. Agenda

8. At its meeting held on 21 January 1991, the Group considered the provisional agenda (E/CN.4/AC.33/1991/L.1) submitted by the Secretary-General, and adopted the following items as the agenda of its 1991 session:

"1. Opening of the session by the representative of the Secretary-General

2. Election of officers

3. Adoption of the agenda

4. Consideration of reports submitted by States parties under article VII of the Convention

5. Consideration of the actions of transnational corporations which operate in South Africa, in accordance with Commission resolution 1990/12

6. Report of the Group to the Commission on Human Rights."

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE VII OF THE CONVENTION

9. The Group had before it the following documents: (a) a note by the Secretary-General (E/CN.4/1991/40) concerning the status of the Convention and the submission of reports by States parties under article VII of the Convention and (b) reports submitted since the forty-sixth session of the Commission on Human Rights by: Panama (E/CN.4/1991/Add.1) and Bolivia (E/CN.4/1991/Add.2).

10. The Group undertook the examination of each report in the presence of the representatives of the reporting States who had been invited to attend the meetings of the Group in accordance with the recommendations made by the Group at its 1979 and subsequent sessions.

Panama

11. The second periodic report of Panama (E/CN.4/1991/40/Add.1) was introduced by the representative of the State party, who drew attention to the multi-ethnic composition of Panamanian society, in which currently no form of apartheid existed. The Government had taken several legal and administrative measures to ensure to the population the full enjoyment of all human rights in accordance with international human rights instruments. Referring to the crime of apartheid, she said that the Constitution outlawed discrimination of any kind and that the Penal Code made the total or partial destruction of a specific group of human beings, because of their nationality, race, or religious or political belief, a serious punishable offence. Her Government expressed solidarity with anti-apartheid movements and concern over the high level of violations occurring in South Africa.

12. The Group took note, with appreciation, of the second report of Panama and commended the representative of the State party for her useful introduction. Members of the Group wished to know whether the Constitution and the Penal Code also covered offences by aliens or foreign organizations; on what basis was the length of punishment by imprisonment mentioned in article 311 of the Penal Code established; what measures were being undertaken to disseminate information about the crime of apartheid, especially with regard to the mass media; whether any cases of racial discrimination had occurred in recent times; whether legislative provisions applied equally in peace-time and wartime; and whether information could be provided on indigenous populations and government institutions that dealt with indigenous issues.

13. Replying to those questions, the representative of the State party explained that norms emanating from international treaties were part of national law; any person under the jurisdiction of Panama was therefore subject to legal provisions against the crime of apartheid. With reference to the punishment mentioned in article 311 of the Penal Code, she stated

that account had been taken of international and regional instruments in this respect; furthermore, the length of the incarceration provided for was proportionate to the seriousness of the crime of apartheid. Dissemination of information on apartheid was the task of the free and democratic press, which made sure that crimes did not go unpublicized. No conflicts of a racial nature had occurred recently and legal provisions did not differentiate between war and peace. Several programmes in the field of development, education and medical services were being implemented for the benefit of indigenous populations.

Bolivia

14. The initial report of Bolivia (E/CN.4/1991/40/Add.2) was introduced by the representative of the State party, who explained that due to historic factors Bolivia had a multi-ethnic society and that the Government had promulgated several laws prohibiting discrimination and had taken measures in the field of agriculture, education and political rights with the aim of ensuring equal enjoyment of human rights by all sectors of the population, including indigenous populations. A general law was also being prepared for minority groups to ensure respect for their rights and customs. The Government had not considered it necessary to adopt new laws or administrative provisions banning apartheid since the legal structure in Bolivia prohibited any form of discrimination based on race, sex, conscience or ideology; and no practices similar to apartheid had occurred in Bolivia. Bolivia had no links whatsoever with the Government of South Africa and clearly and firmly rejected the concept of apartheid at the international level.

15. The Group took note, with appreciation, of the initial report of Bolivia and praised the Government for having presented a useful report which had followed the general guidelines. The representative was commended for the clear and informative manner in which he had presented the report. Members of the Group asked for clarification as to the scope of the crime of genocide in Bolivian legislation and whether that legislation applied also in times of war; and what measures had been taken to disseminate information on apartheid in the education and information system; and whether the relevant provisions also applied to aliens.

16. Replying to those questions, the representative of the State party said that genocide included many crimes; the broadness of that concept allowed for action against all forms of racial discrimination. Bolivian legislation was applicable in times of war and peace; moreover, non-discriminatory provisions could not be suspended during an uprising or a war. Several measures had been taken to strengthen the education system in Bolivia. Lastly, the representative stated that Bolivian law did not distinguish between foreigners and nationals.

IV. CONSIDERATION OF THE ACTIONS OF TRANSNATIONAL CORPORATIONS WHICH OPERATE IN SOUTH AFRICA

17. In accordance with the request contained in Commission on Human Rights resolution 1990/12, the Group of Three continued to consider whether the actions of transnational corporations operating in South Africa came under the definition of the crime of apartheid and whether legal action could be taken under the Convention against them, and, in the light of the views expressed so far by States parties to the Convention (Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Czech and Slovak Federal Republic,

Ecuador, German Democratic Republic, Madagascar, Mexico, Panama, Peru, Syrian Arab Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics), specialized agencies (International Labour Organisation) and non-governmental organizations (International Confederation of Free Trade Unions and Women's International Democratic Federation) (see E/CN.4/1986/46, E/CN.4/1987/27 and Add.1-2, E/CN.4/1988/31 and Add.1-3, E/CN.4/1989/32, E/CN.4/1990/34 and Add.1-2 and E/CN.4/1991/41), examined the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

18. The Group commended the States parties which had submitted their views and information and called upon those which had not yet submitted them to do so as soon as possible and noted with regret that only two States parties had submitted views to the 1991 session. The Group was of the opinion that further examination of the matter was needed and that the views and information of all the States parties to the Convention on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa would be of the greatest usefulness.

19. The Group noted that the principal United Nations organs, specialized agencies, and international and non-governmental organizations had continued to draw the attention of the international community to the close interconnection existing between the activities of transnational corporations operating in South Africa and the persistence of the racist régime in South Africa.

20. The Group noted, with reference to the views and information submitted, that all States parties were in agreement as to the necessity of imposing sanctions against the apartheid régime, in accordance with Chapter VII of the Charter of the United Nations and that sanctions should not be relaxed, thus supporting the people of South Africa in their legitimate struggle for freedom and equality. The Group expressed the hope that new concrete measures aimed at the elimination of the apartheid policy of the Government of South Africa would be communicated to the Group in the future.

21. The Group reiterated that the role played by transnational corporations in South Africa was threefold: firstly, they exploited and depleted the natural resources of the country and denied the great majority of the people of South Africa the opportunity to benefit from the economic development of the country; secondly, they exploited the cheap labour force of that region with the single aim of making larger profits for themselves, to the detriment of the majority of the population; and thirdly, by operating in South Africa, contrary to the resolutions of the United Nations, they strengthened the apartheid régime, helped to perpetuate the oppression of the African majority and enhanced the repression against those fighting for their independence.

22. Within that context the Group rejected as completely unfounded the assertion that the action of transnational corporations operating in South Africa and close co-operation between certain countries and the racist régime of South Africa in the political, economic, military and other spheres were helping to improve the critical situation of the overwhelming majority of the population of that country and contributed to making the system of apartheid more human.

23. The Group endorsed the conclusion that, by their complicity, the transnational corporations operating in South Africa must be considered, in conformity with article III (b) of the Convention, accomplices in the crime of apartheid and must be prosecuted for their responsibility in the continuation of that crime. In that connection, the Group called upon all States parties to the Convention to incorporate in their legislation provisions to that effect.

V. CONCLUSIONS AND RECOMMENDATIONS

24. The Group of Three expressed its appreciation to the representatives of the reporting States for their presence at its meetings and noted with satisfaction that both of the reports considered by the Group at the current session were introduced by the representatives of the reporting States.

25. The Group commended States parties which have submitted periodic reports and noted with concern that only two States parties had submitted reports since the forty-sixth session of the Commission. Observing that up to its 1991 session it had considered 127 reports, the Group noted with concern that 35 States parties, as listed in document E/CN.4/1991/40, had not submitted any report, and urged in particular those States parties which had not yet submitted their initial reports to do so as soon as possible. The Group further noted with great concern that, as at 31 December 1990, approximately 180 reports were overdue under the Convention, and once again strongly urged the States parties concerned to fulfil their reporting obligations as required under article VII of the Convention. The Group urged the States parties concerned to expedite the submission of their overdue reports as requested by the General Assembly in resolution 45/90.

26. Noting with regret that the reports submitted by some States parties were not in line with the general guidelines, the Group reiterated its recommendation that all States parties when preparing their reports should strictly follow the general guidelines regarding the form and contents of reports (E/CN.4/1286, annex).

27. The Group noted with concern that only one State acceded to the Convention in 1990 and that only 88 States had become parties to the Convention. Convinced that the ratification of, or accession to, the Convention on a universal basis and the implementation of its provisions were necessary for its effectiveness, the Group recommended once again to the Commission on Human Rights that it should urge all States which have not yet done so to ratify or to accede to the Convention without delay, in particular those States which have jurisdiction over transnational corporations operating in South Africa.

28. The Group called upon all States parties to the Convention to incorporate in their legislation provisions relating to the "crime of apartheid" including practices of racial segregation and discrimination in accordance with article II of the Convention, and to provide appropriate penalties in respect of persons guilty of the crime of apartheid, as stipulated in article IV (b) of the Convention. In that connection, the Group recalled the view which it had expressed earlier that consideration should be given to drawing up model legislation which would serve the States parties as a guide for the implementation of the provisions of the Convention. The Group appealed in

that respect to the Commission on Human Rights to strengthen the advisory services of the Centre for Human Rights in order to enable it to assist States parties in the fulfilment of their obligations under the Convention.

29. The Group wished to appeal once again to States parties, through the Commission on Human Rights, to strengthen their co-operation at the international level and to adopt legislative and administrative measures to implement fully and expeditiously, in accordance with the Charter of the United Nations, the decisions taken by the Security Council and other competent organs of the United Nations and its specialized agencies aimed at the prevention, suppression and punishment of the crime of apartheid, in accordance with article VI of the Convention.

30. The Group took note of Economic and Social Council resolution 1990/70, by which the Council condemned those transnational corporations that continue to collaborate with the racist minority régime in South Africa in defiance of United Nations resolutions and international public opinion and, in many cases, in violation of measures adopted by their home countries.

31. The Group called on all States whose transnational corporations continued to do business with South Africa to take appropriate steps to terminate their dealings with South Africa. It further urged developing countries to take concerted action to persuade transnational corporations, specially those trading within their territories, to end their operations in South Africa.

32. The Group recommended to the Commission that it request the Secretary-General to give wide publicity to the list of banks, transnational corporations and other organizations operating in South Africa, as reflected in the updated study prepared by the Special Rapporteur, Mr. Ahmed Khalifa (document E/CN.4/Sub.2/1990/13 and Add.1) and to disseminate the list, as well as any other relevant studies, as widely as possible, including through the United Nations Information Centres around the world, and to report to the Commission at its forty-eighth session on the implementation of this provision.

33. The Group wished to note once again that the crime of apartheid is a form of genocide, similar in nature to Fascist and Nazi crimes, and as such falls under the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Group recommended to the Commission on Human Rights that it reflect this similarity in its respective resolutions, and stress the fact that adherence to the International Convention on the Suppression and Punishment of the Crime of Apartheid is a step towards implementation of the Convention on the Prevention and Punishment of the Crime of Genocide.

34. The Group, recalling in particular paragraph 3 of General Assembly resolution 3068 (XXVIII), by which the Convention was adopted, as well as General Assembly resolution 45/90, wished once again to draw the attention of United Nations organs, specialized agencies and international and national non-governmental organizations to the need to step up their activities in enhancing public awareness by denouncing the crimes committed by the racist régime of South Africa and to intensify their efforts, through appropriate channels, such as seminars and workshops, to disseminate information on the Convention and its implementation. In that connection, the Group also wished to emphasize the importance of the role of the mass media.

35. The Group wished to emphasize once again the importance of measures to be taken in the field of teaching and education with a view to familiarizing the population with the evils of apartheid and to ensuring fuller implementation of the Convention and invited the States parties to include information on these measures in their reports.

36. The Group continued to believe that the implementation of article V of the Convention, relating to the establishment of an international penal tribunal, was conducive to the strengthening of the mechanisms for combating apartheid.

37. The Group reiterated its opinion that the assistance given to national liberation movements in South Africa should be strengthened and called upon the international community to contribute generously to such movements.

38. The Group wished to recommend to the Commission on Human Rights that it request the Secretary-General to invite once again the States parties to the Convention which have not yet done so to express their views on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

39. The Group wished to recommend to the Commission on Human Rights that it request the Secretary-General to invite the States parties to the Convention, the specialized agencies and non-governmental organizations to provide the Commission with relevant information concerning the types of crime of apartheid, as contained in article II of the Convention, committed by transnational corporations operating in South Africa.

40. Taking into account Commission on Human Rights resolution 1989/8 of 23 February 1989, by which the periodicity for the submission of reports was extended from two-year to four-year intervals, and noting that for the 1991 session only 2 reports had been received as compared to the average of 10 reports per year received in previous years, the Group recommended to the Commission that the Group of Three should henceforth meet every two years rather than annually as at present.

41. While noting that limited progress had been made in South Africa and that a dialogue had taken place between the South African authorities and the political leaders of the majority of the people, the Group reiterated its conviction that the maintenance of the imposition of comprehensive and mandatory sanctions as well as other forms of pressure against the racist régime in South Africa was an important effective means available to the international community for putting an end to the system of apartheid. The Group also considered that it would be desirable to undertake serious efforts to bring to an end the policies and practices of apartheid of the Government of South Africa through negotiations based on the principle of justice and peace for all as stated in the Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted unanimously by the Sixteenth Special Session of the General Assembly on 14 December 1989 in resolution S-16/1.

VI. ADOPTION OF THE REPORT

42. At its meeting on 25 January 1991, the Group considered the draft report on the work of its 1991 session. The draft report, as revised during the discussion, was adopted unanimously.